

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

REC'D IN
REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

In Re: Complaint of XO Tennessee, Inc.)
Against AT&T Communications of the) Docket No. 01-01072
South Central States and AT&T Corporation)

**RESPONSE OF XO TENNESSEE, INC. TO MOTION TO DISMISS AND MOTION TO
AMEND COMPLAINT**

XO Tennessee, Inc. ("XO") submits the following response to the Motion to Dismiss AT&T Corp. as a defendant in this proceeding.

AT&T Corp. is the parent company of AT&T Communications of the South Central States, LLC (hereinafter referred to as "AT&T") which offers regulated telecommunications service in Tennessee under the jurisdiction of the Tennessee Regulatory Authority ("TRA"). AT&T Corp. contends that the TRA has "no personal jurisdiction over AT&T Corp." The motion does not explain why the TRA lacks jurisdiction over the parent company of a regulated utility.

In *Tennessee Public Service Commission v. Nashville Gas*, 551 S.W.2d 315 (Tenn., 1977), the Tennessee Supreme Court held that the Public Service Commission, predecessor of the TRA, had the power to require the parent company of Nashville Gas, a regulated utility, to produce information needed by the PSC regarding the regulation of Nashville Gas. There, as here, the parent company argued that the PSC had no jurisdiction over the unregulated parent. Overruling those objections, the Court held that the Commission was not limited by corporate structures and was fully entitled to obtain information from the parent company. The Court wrote (at 319):

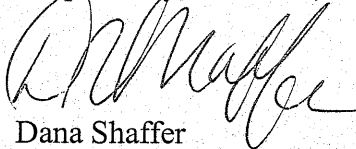
(A) regulatory body such as the Public Service Commission is not bound in all instances to observe corporate charters and the form of

corporate structure or stock ownership in regulating a public utility . . . Considerations of "piercing the veil". . . are largely irrelevant in the regulatory and revenue fields.

It remains to be seen whether, in this case, XO will need to seek information and/or relief from AT&T Corp. Nevertheless, it is clear from the *Nashville Gas* case that the TRA does, in fact, have personal jurisdiction over AT&T Corp. as may be necessary to address issues surrounding the regulated operations of AT&T in Tennessee. Therefore the Motion to Dismiss should be denied.

XO further moves to amend its complain by substituting "AT&T Corp." for "AT&T Corporation" and substituting "AT&T Communications of the South Central States, LLC" for "AT&T Communications of the South Central States, Inc.".

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2002, a copy of the foregoing document was served on AT&T's counsel via U.S. Mail, postage prepaid, addressed as follows:

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